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Intellectual Property Causes
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IFW
1654

Attorney Docket No. P21772

In re application of : Jacques POINT et al.

Application No. : 09/926,718 (National Phase of PCT/FR00/01302)

Mail Stop Amendment

Group Art Unit : 1654

I.A. Filed : May 15, 2000

Examiner : WINSTON

For : METHOD FOR OBTAINING FROM A CULTURE MEDIUM OF MICROALGAE, A HEAT-STABLE EXTRACT WITH ANTIOXIDANT AND WOUND HEALING ACTIVITY

Mail Stop Amendment

Commissioner for Patents

U.S. Patent and Trademark Office

220 20th Street S.

Customer Window

Crystal Plaza Two, Lobby, Room 1B03

Arlington, VA 22202

Sir:

Transmitted herewith is an **Election with Traverse** in the above-captioned application.

☒ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☐ A Request for Extension of Time.

☒ No additional fee is required.

The fee has been calculated as shown below:

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 20	*20	0	x 9=	\$0.00	x 18=	\$
Indep. Claims: 1	**3	0	x 44=	\$0.00	x 88=	\$
Multiple Dependent Claims Presented			+150=	\$0.00	+300=	\$
Extension Fees for ____ Month(s)				\$0.00		\$
Total:				\$0.00	Total:	\$

* If less than 20, write 20

** If less than 3, write 3

☐ Please charge my Deposit Account No. 19-0089 in the amount of \$ ____.

☐ A check in the amount of \$ ____ to cover the filing/extension fee is included.

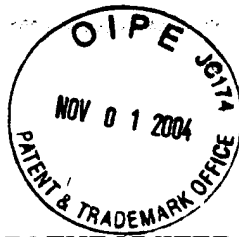
☒ The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 C.F.R. 1.136(a)(3)).

Neil F. Greenblum
Reg. No. 28,394

P21772.A07



Application No. 09/926718

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : J. POINT et al.

Group Art Unit : 1654

Appl. No : 09/926,718
(U.S. National Phase of PCT/FR00/01302)

Examiner : Winston

I.A. Filed : May 15, 2000

For : METHOD FOR OBTAINING FROM A CULTURE
MEDIUM OF MICROALGAE, A HEAT-STABLE EXTRACT
WITH ANTIOXIDANT AND WOUND HEALING ACTIVITY

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop _____
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir :

This is in response to the requirement for restriction under 35 U.S.C. 121 and 372 mailed from the U.S. Patent and Trademark Office on October 1, 2004, which sets a one month shortened statutory period for response until November 1, 2004.

Applicants note that this response is being filed prior to the expiration of the one month shortened statutory period for response, whereby an extension of time should not be necessary to maintain the pendency of the application. However, if any extensions of time are required to maintain the pendency of this application, this is an express request for any required extension of time, and authorization to charge any required fee to Deposit Account No. 19-0089.

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks which follow:

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372:

The application is asserted to contain claims directed to more than one species of the generic invention, and that the species lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In particular, Applicants are required to elect a single functional effect instantly claimed as set forth below:

- I Antioxidant activity, wound healing activity and antiradical activity
- II Tissue regeneration activity
- III Slow skin aging activity
- IV Anti-inflammatory activity
- V Biological control of plant parasite activity.

The restriction asserts that the species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features as each group has a distinct functional effect that has acquired a separate status in the art as separate subject matter and, thus, requires independent searches.

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Election

In order to be responsive to the requirement for restriction, Applicants elect Species I. Antioxidant activity, wound healing activity and antiradical activity, with traverse. Applicants respectfully submit that at least claims 1-4 are generic, and at least claims 1-5, 6, 8, 9, 10, 11, 12, 19 and 20 are readable on the elected species.

For the reasons set forth below, Applicants submit that the restriction requirement is improper, and should be withdrawn, whereby an action on the merits of all of the pending claims is warranted.

Traverse

Notwithstanding the election of the claims of Species I in order to be responsive to the requirement for restriction, Applicants respectfully traverse the requirement.

The Examiner is also reminded that in determining unity of invention, the criteria set forth in 37 C.F.R. 1.475 must be considered. Specifically, Applicants note that 37 C.F.R. 1.475 provides:

Unity of invention before the International Searching Authority, the International Preliminary Examining Authority, and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(b) An international or a national stage application containing claims to

different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
 - (2) A product and process of use of said product; or
 - (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
 - (4) A process and an apparatus or means specifically designed for carrying out the said process; or
 - (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.
- (c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.
- (d) If multiple products, processes of manufacture, or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).
- (e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Applicants point out that in determining unity of invention the criteria set forth in 37 C.F.R. 1.475 must be considered. Thus, in stating the restriction requirement, the requirement must state why unity of invention is lacking at least under 1.475. Therefore, the restriction requirement is improper for not discussing the various sections of 1.475.

In any event, even if lack of unity of invention is maintained, Applicants note that upon allowance of a generic claim, the claims of the non-elected species should be rejoined, and allowed with the allowed generic claims.

In view of the foregoing, it is respectfully requested that the Examiner seriously reconsider the requirement for restriction, and withdraw the same so as to give an examination on

the merits on all of the claims pending in this application, or rejoin the non-elected species claims upon allowance of a generic claim.

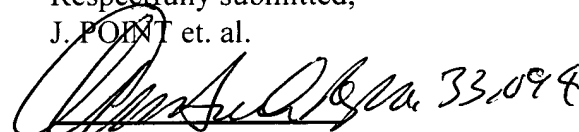
CONCLUSION

For the reasons discussed above, it is respectfully submitted that the requirement for restriction is improper because unity of invention is present, and the requirement should be withdrawn.

Withdrawal of the requirement for restriction with examination of all pending claims is respectfully requested.

Favorable consideration with early allowance of the application is most earnestly requested.

Respectfully submitted,
J. POHNT et. al.


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November 1, 2004
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